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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,485	07/08/2003	Patrick R. O'Connell	9892-000001/COB	8969

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EXAMINER	
DOUGLAS, STEVEN O	

ART UNIT	PAPER NUMBER
3751	

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/615,485	O'CONNELL, PATRICK R.	
	Examiner	Art Unit	
	Steven O. Douglas	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *23-58* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *23-58* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 09142004, 11102005, 06102004, 10242003.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 52 is objected to because of the following informalities: "hold" (line 1) should be - - hole - -. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-26,28-31,35-37,42-49,51-53 and 56-58 rejected under 35 U.S.C. 102(b) as being anticipated by Yoshita (JP 58-194627).

The Yoshita reference discloses a gas tank filler neck 10 that is manufactured by a drawing process (see punch P) comprising a transition portion (see Fig. 4).

In regard to claims 43-45 and 56-58, in regard to the geometric configurations (i.e. elliptically-shaped junction at a inclined plane and D_1 being at least 1.5 times D_2), upon inspection of the drawings of the Yoshita reference it appears that these limitations are met in much as Applicant's meets such limitations (this position is consistent with the position the Examiner took in a related re-exam 90/007,155).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 27,38,39,41,50 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshita in view of Bates et al.

The Yoshita reference discloses a gas tank filler neck (supra), but does not disclose a nozzle positioning receptor or an anticorrosive coating. The Bates reference discloses another gas tank filler neck that utilizes a positioning receptor 10 in order to prevent insertion of a non-unleaded type fuel nozzle. Furthermore, the Bates et al. reference discloses use of anti-corrosive coating 41 to inhibit rust of the associated filler neck. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Yoshita device to utilizes a positioning receptor and an anti-corrosive coating in view of the teachings of the Bates et al. reference to prevent insertion of a non-unleaded type fuel nozzle and to inhibit rust of the associated filler neck, respectively.

Claims 32-34,40 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshita in view of Whitley, II et al

The Yoshita reference discloses a gas tank filler neck (supra), but does not disclose a barbed or beaded outlet opening. The Whitley, II. et al. reference discloses another filler neck with associated barbed or beaded outlet opening 18 in order to accommodate a fuel hose C1. Therefore, it would have been obvious to one of ordinary skill in the at the time the invention was made to modify the Yoshita device to have barbed or beaded outlet in view of the teachings of the Whitley, II reference to accommodate a hose associated with most fuel tanks.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 23-58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,588,459. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims define a device and method that anticipates the now claimed subject matter. Examiner takes Official Notice that anticipation falls well within the scope and definition of obviousness. Therefore, to have claims drawn to the now claimed subject matter would have been obvious to one of ordinary skill in the art at the time the invention was made in view of Examiner's Noticed fact. See also In re Goodman cited above.

Claims 23-58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,330,893. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims define a device and method that anticipates the now claimed subject matter. Examiner takes Official Notice that anticipation falls well within the scope and definition of obviousness. Therefore, to have claims drawn to the now claimed subject matter would have been obvious to one of ordinary skill in the art at the time the invention was made in view of Examiner's Noticed fact. See also In re Goodman cited above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Fri 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven O. Douglas
Primary Examiner
Art Unit 3751

SD
6-7-06